

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

XIUPING LU AND XIA LIN

Plaintiffs,

**AFFIDAVIT IN
OPPOSITION TO
MOTION FOR
DEFAULT**

- against -

Docket # 10-5887

CHINESE BODY WORK AND BIN CHENG,

Defendants.

BIN CHENG, being duly sworn, hereby states and affirms:

1. I am a named defendant in this action and am fully familiar with the facts and circumstances in this action.
2. I submit this affidavit in opposition on myself, personally, to Plaintiffs' motion for default as to me personally, assert that Plaintiffs never secured personal jurisdiction over me, that Plaintiffs caused me to be served at a location where I did not live, and I attach hereto a proposed answer showing a meritorious defense.
3. I do not know and do not have familiarity with the Defendant Chinese Body Work.
4. Review of the Plaintiff's affidavits of service set forth at attachment B to their motion assert that "nail and mail" substituted service on Bin Cheng, personally, was purportedly made on April 8, 2011 at 33-70 Prince St., Queens, New York and on April 8, 2011 at 43-30 162nd St., Flushing, New York, with subsequent mailing but no specified address in the affidavits of service for the mailing.

5. I did not reside at either 33-70 Prince St., Queens, New York or 43-30 162nd St., Flushing, New York on April 8, 2011, or at any other time.

6. I attach as attachment A hereto a copy of my license permit issued on its face on February 19, 2010 which shows my residence to be 142-20 41 Ave 4C, Flushing, New York.

7. Since November 2010, I have resided at 3793 State Route 203, Valatie New York.

8. The address where the purported service occurred according to the affidavits of service was not at the address where I resided at the time of claimed service or at any other time, and not my address on my New York State License Permit which was readily obtainable from the New York State Department of Motor Vehicles.

9. I was employed by a corporation that was a tenant at both 33-70 Prince St., Queens, New York or 43-30 162nd St., Flushing, New York until October 2010, but that has not been a location where I worked since then, and was not a location where I worked as of April 8, 2011, the date of purported service.

10. In addition, the Plaintiffs knew I had not worked at that location for over six months at the time of the purported service of process.

11. I never received a correspondence at any address that would be the "mail" portion of the claimed "Nail and Mail".

12. In addition, I attach a proposed answer to the complaint and state that I have a meritorious defense to the allegations in the complaint.

WHEREFORE, Defendants request that motion for default be denied, in full, and for such other and further relief that the court deems appropriate.

Sworn to me on the
3rd day of May, 2013

KEVIN A. LUIBRAND
Notary Public, State of New York
No. 02LU6247718
Qualified in Saratoga County
Commission Expires August 29, 2016

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BIN CHENG